

## **REMARKS**

### **Status of Claims**

Claims 1-49 were previously pending.

Upon entry of this paper, claims 10, 11, 13, 28, 29, and 35-49 are canceled, and new claims 50-58 are added. Applicants reserve the right to pursue any canceled subject matter in one or more continuing applications.

Claims 1-9, 12, 14-27, 30-34, and 50-58 are pending.

### **Support for Amendments**

Claims 1, 30, 31, 33, and 34 are amended to specify that the gelatine or collagen powder has a mean particle size in the range of 30 to 250 microns. Support can be found on page 7, lines 10-11.

Claims 4, 6, 8, 12, 14, 15, 17, 18, 22, 23, 25, 26, and 32 are amended for format according to US practice for multiple dependency. Claim 27 is amended to depend from claim 1. Support can be found throughout the specification as originally filed.

Claim 14 is amended to present a preferred particle size range. Support can be found on page 7, lines 10-33. Claim 16 is amended to present an embodiment separately in new claim 50. Claim 24 presents thrombin as a species of coagulation factor. Support can be found in original claim 24.

New claim 51 presents various agents which improve adhesive properties. Support can be found on page 9, line 13 through page 10, line 3. New claims 53-58 correspond to claims 2-7. Support can be found in original claim 28.

No new matter is introduced.

### **Restriction Requirement**

The claims are restricted into Group I (claims 1-33), Group II (claim 34), Group III (claims 35-47), Group IV (claim 48), and Group V (claim 49), as not relating to a single general

inventive concept under PCT Rule 13.1 because they allegedly fail to define a special technical feature over the prior art.

Applicants elect Group I (claims 1-33, drawn to a powder delivery system comprising gelatine or collagen powder, a process of making said powder, and a method of using said delivery system) with traverse. The traversal is on the basis that Groups I and II define a special technical feature over the prior art, and therefore have unity of invention. New claims 50-52 ultimately depend from claim 1, including all the limitations therein, and should therefore be included in Group I. New claims 53-58 ultimately depend from claim 34, including all the limitations therein, and should therefore be examined with claim 34.

The Restriction Requirement asserts that the single general inventive concept of the claims is dried gelatin, and cites U.S. Patent No. 5,951,531 (“Ferdman”) as disclosing dried gelatin. The Office Action concludes that the claims lack a special technical feature.

Applicants note that Ferdman fails to explicitly refer to a gelatine or collagen powder having a mean particle size in the range of 30 to 250  $\mu\text{m}$ , nor to a powder delivery system having a protective structure being a skirt portion arranged to extend from the discharge opening. Applicants thus submit that Ferdman does not disclose the particle size of the haemostatic agent of the instant claims. Therefore, the pending claims define a special technical feature over the prior art, and Groups I and II have unity of invention. Applicants respectfully request that the Restriction Requirement be withdrawn with respect to Groups I and II.

### **Election of Species Requirement**

An election of species is required from the genus of coagulation factors of claim 23 and the species listed in claim 24. Applicants elect thrombin as a species of coagulation factor in the genus of coagulation factors for claims 23-24. Claims 23-24 are readable on the elected species.

The election of species is made with traverse on the basis that Applicants are entitled to examination of a reasonable number of species (*i.e.*, reasonable being more than 1). Furthermore, there is no serious burden to the Examiner in searching the genus of claim 23 because USPTO examination routinely covers large numbers of compounds, and USPTO examiners are accustomed to such examination. According to the MPEP,

If the search and examination of all the claims in an application

can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

See MPEP 803. Even assuming that the various species lack unity of invention within the genus of coagulation factors, Applicants believe that the Examiner must examine them on the merits because examination can be made without serious burden, as directed by the MPEP.

Applicants understand that upon allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species.

## CONCLUSION

Applicants respectfully submit that the instant application is in condition for allowance. In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

## AUTHORIZATION

The Commissioner is hereby authorized to charge any fees which may be required for this amendment, or credit any overpayment to Deposit Account No. **50-3732**, Order No. **13323.105002**. Furthermore, in the event that an extension of time is required, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-noted Deposit Account No. **50-3732** and Order No. **13323.105002**.

Respectfully submitted,  
KING & SPALDING, L.L.P.

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